

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte E. STUART SAVAGE and DAVID C. CLACK

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2006-1611
Application No. 10/669,771

ON BRIEF

Before KIMLIN, PAK, and WARREN, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-23.

Claim 1 is illustrative:

1. A process for removing BOD and suspended solids from a high volume wastewater stream comprising:

piping high volume, raw, unsettled wastewater directly to a deep bed filter without pretreatment in a facultative zone;

filtering the high volume, raw, unsettled wastewater by filtration through the deep bed filter;

backwashing the deep bed filter.

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The examiner relies upon the following references as evidence of obviousness:

Nebolsine	4,128,477	Dec. 5, 1978
Maxson	5,156,738	Oct. 20, 1992

Appellants' claimed invention is directed to a process for removing BOD (Biochemical Oxygen Demand) and suspended solids from a high volume wastewater stream. The asserted inventive aspect of appellants' invention is piping the raw, unsettled wastewater directly to a deep bed filter without pretreatment in a facultative zone.

Appealed claims 1-5, 8, and 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Nebolsine. Claims 6, 7, 9-14, and 16-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nebolsine in view of Maxson.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we find that the examiner's rejections are fully supported by the prior art relied upon and in accord with current patent jurisprudence. Accordingly, we will sustain the examiner's rejections for the reasons set forth in the Answer, and we add the following primarily for emphasis.

We consider first the examiner's § 102 rejection. There is no dispute that Nebolsine, like appellants, describes a process

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for removing BOD and suspended solids from a high volume wastewater stream comprising the claimed steps of piping high volume raw, unsettled wastewater to a deep bed filter without pretreatment in a facultative zone, filtering the high volume wastewater by filtration through the deep bed filter, and backwashing the deep bed filter. The principal contention of appellants is that Nebolsine does not describe the claimed step of piping the raw wastewater directly to the deep bed filter. Although, as pointed out by the examiner and acknowledged by appellants, the claimed process includes screening the unsettled wastewater prior to piping to the deep bed filter, it is appellants' contention that the specification defines the claimed term "directly" as excluding the narrow or fine screening of Nebolsine. Appellants point to the paragraph bridging pages 5 and 6 of the present specification for their position that the claimed step of piping directly includes course screening but excludes fine screening. Appellants state that "[i]n this paragraph the Applicant goes on to explicitly state that 'fine screening is not required'" (page 3 of Reply Brief, second paragraph).

Our review of appellants' specification finds us in agreement with the examiner that appellants' argument is without merit. Appellants' specification fails to provide any definition of "piping . . . directly" that requires the exclusion of the fine screening disclosed by Nebolsine. In particular, the specification states at page 1 that "[m]ore specifically the invention relates to a process for treatment of raw, unsettled wastewater by direct filtration through a deep bed filter without prior treatment in a facultative zone" (lines 11-14). Page 4 of the specification relates "[i]n this innovative process, both the primary steps of passing the sewage wastewater through a clarifying or settling tank to remove solids or through a facultative zone for denitrification are replaced by the one inventive step of feeding fresh, unsettled sewage directly into a deep bed filter for aerobic filtration" (lines 4-8). Accordingly, it is our view that the claimed piping directly can be reasonably interpreted as excluding passing the wastewater through a clarifying or settling tank to remove solids or through a facultative zone for denitrification, but not as excluding fine screening. The statement at page 6 of the specification, line 2, that "[f]ine screening is not required" would be reasonably interpreted by one of ordinary

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skill in the art as such fine screening is optional, but not required. Consequently, we find that the appealed claims encompass the optional step of fine screening and, therefore, do not distinguish over the process described by Nebolsine.

Turning to the examiner's § 103 rejection of claims 6, 7, 9-14, and 16-23, we fully concur with the examiner's legal conclusion that "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to backwash the filter bed of Nebolsine in the manner taught by Maxson, in order to thoroughly remove filtered contaminants from this primary reference filter, thereby allowing it to be reused" (page 3 of Answer, last sentence). Appellants maintain that the flow rates, time duration and frequency disclosed by Maxson "are a generalized background explanation of a backwashing sequence" (page 11 of principal brief, second paragraph). However, the fact that Maxson discusses air-water, air, and water backwash cycles at the claimed flow rates and duration of time and frequency in the background section of the patent does not undermine the obviousness of employing such backwash conditions in the process of Nebolsine. We note that appellants' argument against the § 103 rejection in the Reply Brief simply entails

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Maxson not curing the asserted deficiency of Nebolsine with respect to the claimed direct filtration process.

As a final point, we note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

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D'Ambrosio & Associates, PLLC
10260 Westheimer
Suite 465
Houston, TX 77042